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ABSTRACT

Insurance carriers and state directors of special education were contacted for information regarding policies regarding third party payments for related services mandated for handicapped students under P. L. 94-142, the Education for All Handicapped Children Act. Insurance companies were queried regarding reimbursable services, conditions for reimbursement, levels of reimbursement, and qualifications for eligible providers. Findings indicated that school systems are not eligible for reimbursement under the individual's group health insurance policy, and that otherwise reimbursable services are not reimbursable to the school system when the system provides those services. Analysis of state policies revealed confusion over the distinction between educationally and medically related services. Among other findings was that insurance companies negate payments based on governmental benefits exclusion clauses for services required by law. Potential strategies for obtaining third party payments for related services delivered by a school system to handicapped children are considered. A final chapter reviews cooperative agreements between the Bureau of Education for the Handicapped and other federal agencies (including Head Start, Office of Child Health Medicaid Bureau, and the Social Security Administration) regarding cost sharing and service delivery. (CL)

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THIRD PARTY PAYMENTS FOR RELATED SERVICES: POLICY ISSUES AND IMPLICATIONS FOR HANDICAPPED STUDENTS

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March 1980

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INTRODUCTION

Third party payments for related services to handicapped students is an emerging policy issue. As school districts throughout the country seek to implement P.L. 94-142, The Education for All Handicapped Children Act of 1975, they are also exploring various options for financial support of its mandates. Cost sharing in the delivery of related services is one such option being considered at present by educational policy makers.

With the passage of P.L. 94-142, education agencies must insure the availability of those related services included on a handicapped child's individualized education program (IEP), but the services can and should be provided and paid for through other private and public sources. P.L. 94-142 regulations (§ 121a. 301(a)(b)) require that:

> (a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.
>
> (b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

To be able to provide special education and related services to handicapped children at no cost to their parents, education agencies need to identify the private and public sources of support available and develop a management system to deliver the required services necessary to enable students to benefit from specialized instruction. Cost sharing and the elimination of duplication in program development and service delivery are issues of primary concern for these reasons:

- Related services can be costly to deliver;
- Education agencies often lack expertise and adequate management

systems to assure the availability and delivery of related services to assist a handicapped child in benefiting from special education;

- Traditionally health and welfare agencies have delivered "related services";
- Private insurance companies are now disclaiming liability for related services provided by or through the school system; and
- Other public agencies have frequently withdrawn or reduced their previous commitments to providing such services due to a misinterpretation of P.L. 94-142.

In order to address the policy issues and implications of third party payments for related services delivered to handicapped students, the Policy Options Project (POPs) undertook three research activities. The purpose of these activities was to determine the current status of third party payments for related services across the country and to identify policy gaps and conflicts currently impeding the delivery of related services to handicapped children and youth. The methodology used to achieve this purpose included an analysis of current policies and practices of selected insurance companies; a survey of state practices related to third party payments; and a review of relevant federal interagency agreements. Research findings in these areas constitute the three chapters of this POPs paper.

Prior to situating the policy issues and implications of third party payments, it is necessary to review the provisions of P.L. 94-142 relative to related services and the population eligible to receive them. The important factors to be noted for purpose of this discussion include:

- Not all children with disabilities are "handicapped" under P.L. 94-142;
- Related services are not required to be provided independent of special education; and

- Education agencies must insure the availability of services to handicapped children at no cost to parents, but the state or local education agency can seek financial assistance from other public and private agencies in fulfilling their mandate.

As definded in P.L. 94-142 regulations (§ 121a.5), handicapped children are:

> those children evaluated in accordance with § § 121a.530-121.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally distured, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.

Criteria for determining child eligibility is twofold: first, a determination must be made as to whether a child actually has one or more of the disabilities listed in the above definition; secondly, whether the child requires special education and related services. Unless a child is in need of specially designed instruction to meet a particular educational need, (s)he is not "handicapped" as defined in P.L. 94-142.

Another important concept to understand is that of "related services". P.L. 94-142 regulations (§ 121a.13) state that:

> ...the term related services means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

This list of related services is not exhaustive and may also include other services not included in this definition. It is important to emphasize that related services are required to assist the handicapped child to benefit from special education. They do not stand alone. A child is handicapped because (s)he requires special education; related services are those additional components needed for the child to benefit from specially designed instruction.

As can be seen from this brief analysis, education agencies responsibilities under P.L. 94-142 do not extend to all children who are disabled and who need related services. Consequently, the policies and practices of insurance companies discussed in Chapter I only relate to that portion of the handicapped school aged population requiring or receiving special education and related services.

ACKNOWLEDGEMENTS

This policy options paper represents the cooperative efforts of several persons, all of whom should be acknowledged for their invaluable contributions.

The initial exploration of selected insurance companies' policies and practices was conducted by Ms. Karen Clegg and Ms. Alice Taverna of Boston College during their Master's level internship at The Council for Exceptional Children.

To help identify specific researchable policy issues related to third party payments, the POPs staff met with the following consultants who are experienced in the areas of education, law, and insurance: Mr. Robert Carson (Toledo, Ohio), Mr. Robert Henson-Walling (Office of the Deputy Commissioner, Bureau of Education for the Handicapped, Washington, D.C.), Mr. Howard Klebanoff (Hartford, Connecticut), Dr. Linda Nober (Westfield, Massachusetts), Dr. Allen Sullivan (Dallas, Texas), and Mrs. Jean Tufts (Exeter, New Hampshire). These consultants were instrumental in focusing attention on the relationship of conditions of payment and barriers to third party reimbursements to policy holders and/or the public schools for the delivery of related services under the mandates of P.L. 94-142.

In response to a request from the Commonwealth of Massachusetts Department of Education, the POPs staff initiated a preliminary analysis of current practices of insurance companies with respect to third party payments on a state and local level. Dr. Roger Brown and Ms. Bambi Levine provided valuable information gleaned from their practical experience with insurance carriers and the state legislature.

Special thanks must also be extended to Mr. Fred Weintraub, CEC's Assistant Executive Director for Governmental Relations, to Dr. Scottie Higgins, former Director of the Policy Options Project, and to Ms. Cathe Hockenberry of the POPs staff for providing leadership in addressing these emerging issues and for assistance in the writing of this draft. Appreciation for their assistance in collecting data is also extended to Ms. Josephine Barresi, Ms. Jean Mack, Dr. Barbara Smith, and Dr. Jeffrey Zettel.

Chapter 1

AN ANALYSIS OF SELECTED INSURANCE COMPANIES' POLICIES AND PRACTICES REGARDING THIRD PARTY PAYMENTS FOR RELATED SERVICES

INTRODUCTION

Prior to the passage of P.L. 94-142, many medical and psychological services were paid for by private insurance carriers. Insurance companies are now refusing to pay claims for these and other similar services. This refusal is based on a policy's standard "governmental benefits exclusion clause". According to this clause, an insurance company is not liable for services or supplies that are or could be provided under any government program or law under which the individual is or could be covered. Attention throughout the country has focused on whether a valid obligation of liability exists on the part of an insurance company for certain evaluations, counseling, and physical and occupational therapies, among other services, which a school provides itself or contracts for when these services are included in an individual's insurance policy or contract.

In order to gather information and delineate issues related to third party payments, the Policy Options Project (POPs) staff initially undertook a preliminary analysis of standard policies issued by selected insurance carriers to determine conditions for payment and barriers to third party reimbursements to policyholders and/or an educational agency for related services provided under the provisions of P.L. 94-142. These researchable questions were addressed as part of the initial exploration:

1. What is generally covered by private health insurance policies?

   Including:
   - constraints on coverage
   - reimbursement eligibility
   - payment limitations

2. Can those portions of an individualized education program (related services) that are otherwise eligible for third party support still be covered by an individual's private insurance?
3. Can a state (SEA) or local education agency (LEA) as a qualified provider, bill insurance companies for related services delivered to handicapped children who are dependents of policy holders?

   If yes, how?

   If no, why?
4. Would the fact that the school (LEA or SEA) is legally responsible to provide the related services negate payment for those services under private health insurance.
5. If as a result of the passage of P.L. 94-142 private insurance companies are no longer paying for related services, then are the individual policy premiums being reduced?

METHODOLOGY

In gathering information on these questions relating to private insurance policies, selected insurance carriers who write the largest number of group contracts were contacted by telephone. A general request was made for information concerning "the scope of their most widely held major group health contract" in the following areas:

- reimbursable services
- conditions for reimbursement
- reimbursement levels
- qualifications for eligible providers

The insurance companies were requested to send, if possible, written policy language substantiating their company's position relative to the

issues, questions and terminology used (actual language) on the question areas listed above.

The following companies were contacted:

- Blue Cross Blue Shield of Virginia
- John Hancock
- Blue Cross Blue Shield of Maryland
- Blue Cross Blue Shield Association
- Blue Cross Blue Shield of D.C.
- Prudential Insurance
- Aetna Life and Casualty
- The Travelers
- Connecticut General Life Insurance Company
- Metropolitan Life Insurance Company

In order to clarify the "issue" at hand, the following hypothetical situation was posed to the above listed insurance companies:

In an instance where services, prescribed by a physician, are provided by an appropriately licensed service provider who is employed by a school, is the school system eligible for reimbursement under the individual's insurance plan in the same way that a hospital would be?

If yes, what are the reimbursement procedures, including the appeals process?

If no, please explain.

RESEARCH FINDINGS

Generally, it has been found that, included in "standard policy language" are general limitations that would prevent reimbursement to school systems in

the aforementioned situation. Included below are selected excerpts of "standard policy language":

Connecticut General Life Insurance Company

No payment will be made under this policy for expenses incurred by an Employee or a Dependent

- for charges which the Employee or Dependent is not legally required to pay for, or for charges which would not have been made if no insurance coverage had existed;
- for or in connection with custodial care, education or training; or
- to the extent that the Employee or Dependent is reimbursed, entitled to reimbursement, or is in any way indemnified for those expenses by or through any public program.

The Travelers (from coverage booklet for employees of the State of Connecticut)

Also not covered are...charges you would not be required to pay for if there were no insurance...charges for confinement in a place which is primarily a school...charges for custodial care.

Aetna

Insurance is not provided for the following charges:

- Charges that are made only because the insurance exists, or charges that no covered individual is legally obliged to pay;
- Charges for services or supplies for which benefits are furnished, paid for or which benefits are provided or required under any law of a government; and
- Charges for custodial care.

Prudential

The insurance does not cover:

- Services or supplies to the extent provided under any governmental program or law under which the individual is or could be covered...
- ...hospital charges to the extent that they are allocable to scholastic education or vocational training...

Blue Cross Blue Shield Association

Two Standard Exclusions from the National Approved Prototype:

- Services to which a member is entitled, with or without charge, under a plan or program of any government or governmental body.

- Services for which the individual is not required to make payment. This includes services or supplies furnished without charge or for which the Member has no legal obligation to pay or for which no charge would be made if the Member had no health insurance coverage.

Blue Cross Blue Shield, Washington, D.C.

Basic and Supplemental Benefits are NOT provided for services and supplies:

- For which the subscriber has no legal obligation to pay, or for which no charge would be made if the subscriber had no health insurance coverage.

- Custodial care---Primarily to provide room and board (with or without routine nursing care, training in personal hygiene and other forms of self-care) and supervisory care by a doctor for a person who is mentally or physically disabled and who is not under specific medical, surgical, or psychiatric treatment to reduce the disability to the extent necessary to enable the patient to live outside an institution providing medical care, or when, despite such treatment, there is no reasonable liklihood that the disability will be reduced.

- THE FACT THAT A PHYSICIAN MAY PRESCRIBE, ORDER, RECOMMEND, OR APPROVE A SERVICE OR SUPPLY DOES NOT, OF ITSELF, MAKE IT MEDICALLY NECESSARY OR MAKE THE CHARGE AN ALLOWABLE EXPENSE, EVEN THOUGH IT IS NOT SPECIFICALLY LISTED AS AN EXCLUSION.

Metropolitan Life Insurance

In no event shall the following expenses be considered Covered Medical Expenses:

- Expenses for services for which there is no cost to the Employee or Dependent, or which are provided by any other group insurance plan or prepayment plan.

- Any hospital, surgical and medical services, and any related services and institutional confinement, to the extent that such services or confinement, are available under any plan or program established pursuant to the laws or regulations of any government or under any plan or program in which any government participates other than as an employer.

IMPLICATIONS FOR HANDICAPPED CHILDREN

The question of coverage for handicapped children may be in jeopardy. Some insurance carriers have refused to insure handicapped children on the basis of a standardized "governmental benefits exclusion clause" which provides that no benefits will be provided by the insurance company if a person is eligible to receive services from or at the expense of any governmental agency. Controversy

arises over the question as to whether a particular related service should be considered as "medical" or "educational." The removal of the "governmental benefits exclusion clause" from existing policies would require health insurance companies to pay, where appropriate coverage exists, for those related services that are "educational" in nature. Such action would result in shifting a substantial portion of the economic burden associated with the implementation of special education laws from the public tax base to private insurance carriers.

In times of economic austerity, such action can indeed be very appealing to state and local educational policy makers and legislators. For health insurance officials, however, such an action is unwarranted and ill conceived with higher premiums being assessed to all policy holders. One way or another, the public ends up paying the costs of providing related services.

Typical of the opposition by insurance carriers to making third parties liable for certain related services is the position held by Blue Cross and Blue Shield of Massachusetts. In opposing an amendment to Massachusetts' Chapter 766, which would allow schools to bill Medicaid and private insurers for health services, and prevent insurers from denying coverage to children with special needs, Blue Cross and Blue Shield based their opposition upon:

1. the resulting premium increases;

2. the mandating of a transfer of claim liability from a state program to private health insurance when the consumers of health insurance would be against such a plan;

3. the inequities that result when the cost of a governmental program is shifted from the broad-based pool of taxpayers to the much more limited pool of those holding family health insurance policies; and

4. the lack of controls available to health insurers to guarantee prudent utilization of these health benefits.

A closely related problem is a provision that requires Medicaid to be the "payor of last resort." Medicaid cannot honor fiscal obligations which must

be paid for by another public source or a private insurance company. Medicaid will not pay for services delivered to Medicaid eligibles when the same services are delivered to non-Medicaid eligibles with no attempt at billing private third party payors.

Some advocacy groups question whether requiring the use of private insurance for education related services violates the right to a free appropriate public education for all handicapped children as mandated by P.L. 94-142. They argue that when parents of a handicapped student are asked to utilize their insurance benefits they are, in fact, being denied an appropriate education "at no cost" for their child. The existence of an insurance policy and the quality of coverage are frequently determined by a family's social and economic status. Whereas educational opportunity is a right, health insurance is a fringe benefit often provided by employers to eligible employees. Likewise, discrimination could result unless safeguards exist to prevent the development of a three-track service delivery system: one for privately insured children, another for Medicaid eligible children, and a third for children who qualify for neither.

CONCLUDING OBSERVATIONS

These preliminary findings indicate that at present school systems are not eligible for reimbursement under the individual's group health insurance policy. Services that are otherwise reimbursable, under the insurance policy, are not reimbursable, to the school system, when they are provided through the school system. Insurance companies argue that they are not responsibile for augmenting an education agency's fiscal resources by making payment for related services within educational settings. However, individuals with policies providing selected medical benefits are normally entitled to reimbursement for those services rendered by an authorized provider, when prescribed by a physician, and when the services are billed directly to the individual or the insurance company

by the eligible provider. The question remains as to whether parents with insurance coverage could be billed by the service provider and obtain payments from an insurance company for those related services covered in their policy.

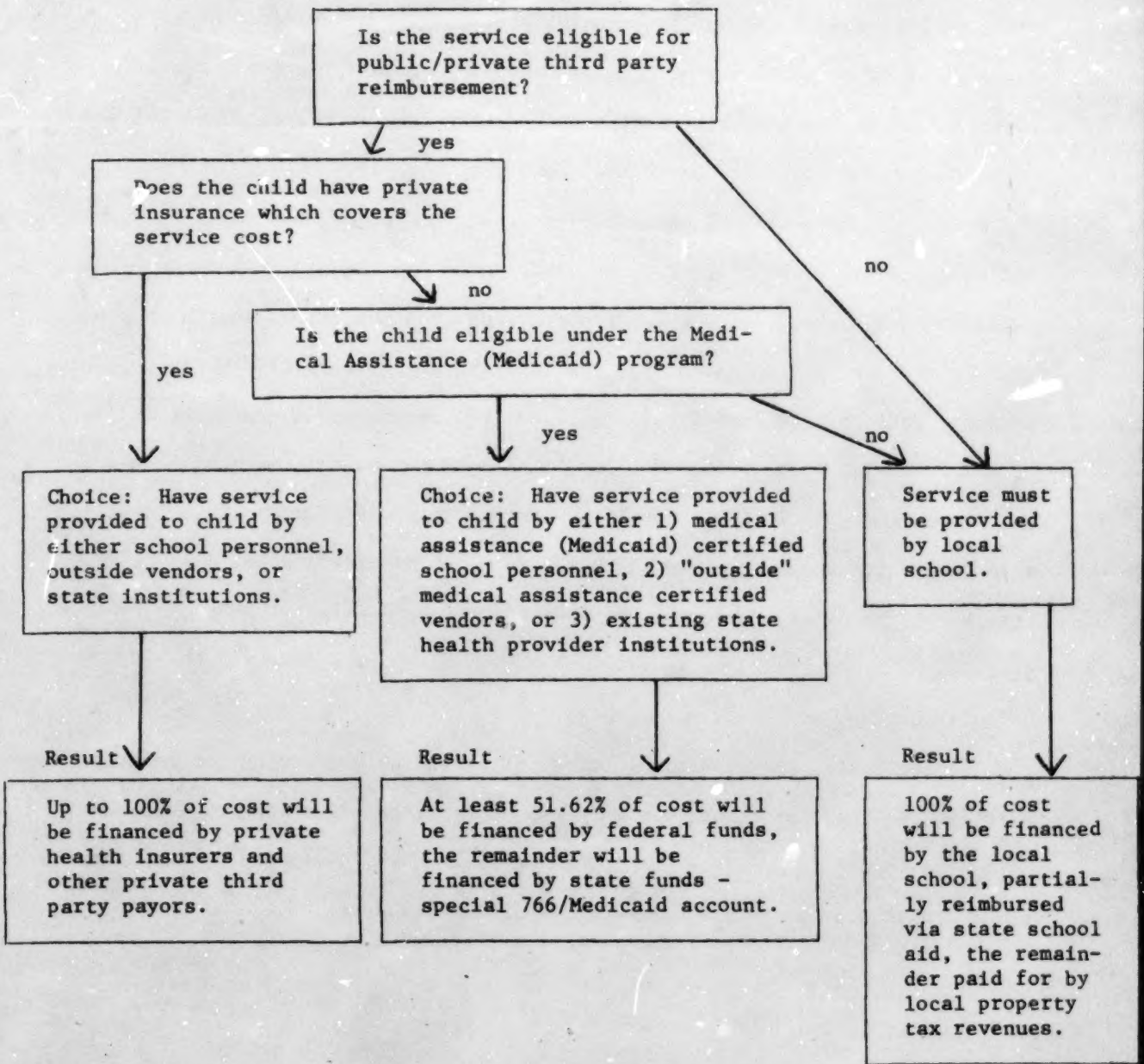
Another policy question to be resolved is that if education agencies can be exempted from the governmental exclusion clause and be considered as primary care providers such as hospitals or clinics, then the education agencies could be considered eligible for third party compensation from insurance companies and Medicaid for the costs of the related services.

Such a change would not obligate insurers to cover any new types of services. Rather, it would prevent third party payors from denying benefits to handicapped children with special needs which are provided to anyone else, such as psychological testing, speech pathology, physical therapy, etc. Third party payments, however, would not be made for teacher services or classroom educational materials.

P.L. 94-142 regulations (§ 121a.301(a)(b)) provide that each state may use whatever state, local, federal, and private sources of support are available to provide an appropriate education for each handicapped child at no cost to the parents. Moreover, nothing relieves an insurer or other third party payor from a valid obligation to provide or to pay for services provided to a handicapped child.

Conceptually, the possible options for providing and paying for related services required for the provision of an appropriate education for each handicapped child are included in the following flow chart, developed by the Division of Special Education in the Commonwealth of Massachusetts:

A FLOW CHART OF THE RECIPIENT/SERVICE/PROVIDER ELIGIBILITY PROCESS


Is the service eligible for public/private third party reimbursement?
yes
no
Does the child have private insurance which covers the service cost?
yes
no
Is the child eligible under the Medical Assistance (Medicaid) program?
yes
no
Choice: Have service provided to child by either school personnel, outside vendors, or state institutions.
Choice: Have service provided to child by either 1) medical assistance (Medicaid) certified school personnel, 2) "outside" medical assistance certified vendors, or 3) existing state health provider institutions.
Service must be provided by local school.
Result
Up to 100% of cost will be financed by private health insurers and other private third party payors.
Result
At least 51.62% of cost will be financed by federal funds, the remainder will be financed by state funds - special 766/Medicaid account.
Result
100% of cost will be financed by the local school, partially reimbursed via state school aid, the remainder paid for by local property tax revenues.

The feasibility and possible effects of these options will be explored in the following chapter. By presenting a preliminary analysis of current state practices, policy makers can be assisted in identifying existing and emerging issues related to obtaining third party payments on state and local levels.

Chapter II
AN ANALYSIS OF STATES' PRACTICES RELATING TO THIRD PARTY PAYMENTS

INTRODUCTION

State and local educational agencies are required under The Education for All Handicapped Children Act (P.L. 94-142) to assure the provision of a free appropriate public education and related services for each handicapped child to benefit from an appropriate education. It is commonly held that early provision of necessary related services can facilitate the learning process and prevent the development of multiple handicapping conditions. Awareness of need and access to service delivery are necessary components to the provision of a free appropriate public education for each handicapped child.

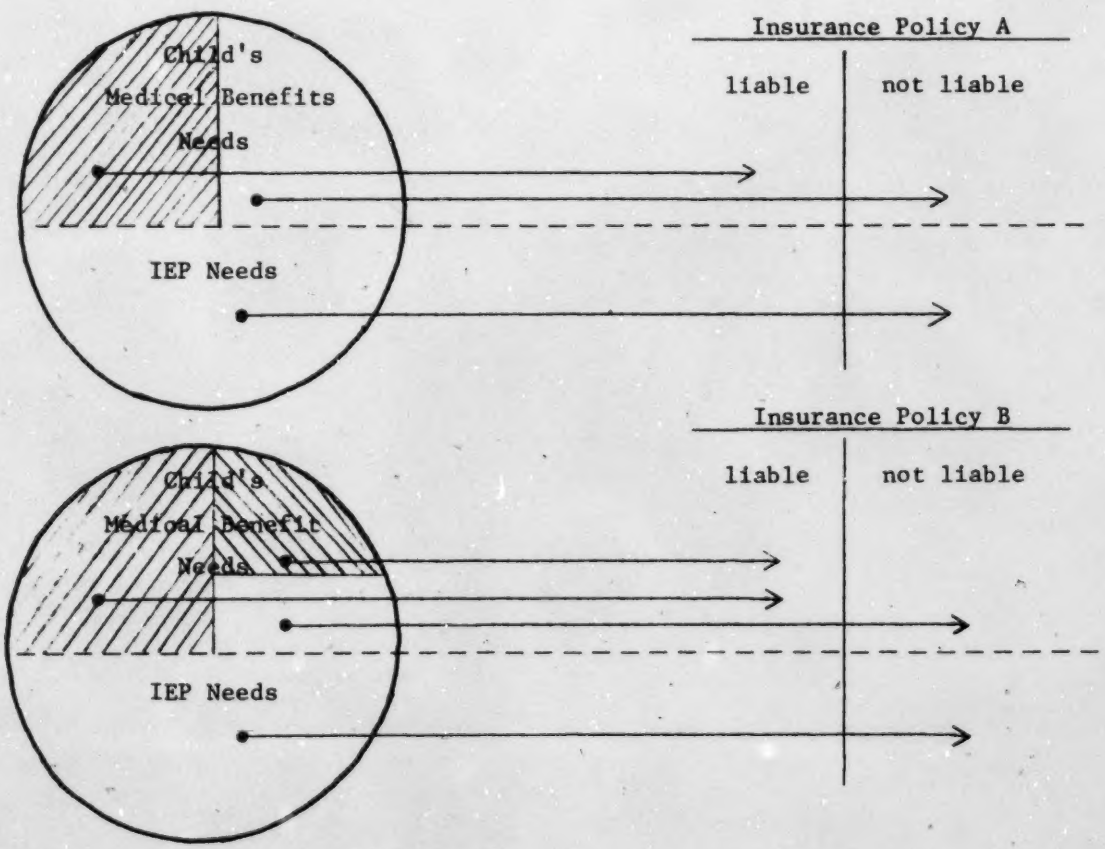
While educational agencies must insure that a free appropriate education is available, each state may use whatever state, local, federal or similar third party sources of support to meet this requirement. P.L. 94-142 Regulations (§§ 121a.301(a)(b)) provide that:

> (a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.
> (b) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

Prior to the passage of P.L. 94-142, many medical and psychological services were paid for by private insurance carriers. To be in compliance with the mandates of P.L. 94-142, a handicapped child's written IEP must include those related services that will be provided so that the child will benefit from special education. As documented in Chapter I, private insurance companies are now refusing

claims for those services based on the policy's standard "governmental benefits exclusion clause." Consequently, policy conflicts arise as to whether a related service is primarily "educational" or "medical."

The resolution of such a conflict is crucial, since liability determines who provides and/or pays for the necessary services. The schematic presentations below attempt to illustrate some of the basic policy differences and conflicts in services covered by different insurance policies and the "related services" mandated by P.L. 94-142 to accomplish the goals of the handicapped student's IEP. The shaded areas represent those "medical benefits" that are covered by a standard policy of a particular private insurance carrier; those related services included on the IEP are frequently excluded under the "governmental benefits exclusion clause." Once a covered service is regarded as "educational," a private insurance company disclaims liability to policy holders and/or their dependents.



A preliminary analysis of selected insurance policies indicate discrepancies in actual practice among different insurance carriers and prompt the need to address these and similar researchable issues:

- Is the basic conflict issue one that necessitates refining the definition of a "related service" (establishing appropriate criteria) or an administrative problem that can be addressed through cooperative efforts between educators and insurance officials? For example, insurance policies A or B will cover specified categories for third party reimbursement unless those services are mandated in a student's individualized educational program (IEP). Then the educational agency, under law, must assure that those services are to be provided at no cost to the child's parents.

- Should the areas of coverage under standard insurance policies be extended for all children and thereby benefit handicapped children who need additional coverage?

- Are there wide discrepancies among insurance carriers with respect to company policy on criteria for coverage? For example, Child A with a particular handicapping condition may be covered under Policy A for related services benefits; but Child B, with the same degree of handicapping condition and the same amount of basic coverage, may be excluded from related services benefits by Policy B.

DATA COLLECTION

To begin gathering data related to third party payments on state and local levels, an Interview Form (Appendix A) was designed by the POPs staff. Each State Director of Special Education (or his/her designee) was contacted by telephone in October, 1979 and asked to respond to these and similar questions:

- Are third party payments made in your state for "related services" when included in a child's IEP as mandated by P.L. 94-142?

- Does your state have a cooperative agreement with the state Medicaid agency that allows schools to deliver Medicaid-paid related services to handicapped children?

- Do third parties pay for or exclude those related services listed in § 121a.13 of the P.L. 94-142 Regulations when they are written into a handicapped child's IEP?

- Who may provide the related service to obtain third party payment?

- Where is the service provided, if third party payments are to be made?

- What billing procedure is used to obtain third party payments?

- Do you have any policies, regulations, agreements, data, etc., relating to third party payments that could be forwarded to us?

RESEARCH FINDINGS

Responses from 49 of the 50 Continental State Directors were obtained. A summary analysis of the responses to the questionnaire indicates the following:

A. Insurance companies have policy clauses that negate payments:

1. when those related services in question are required by law--this is the standard "governmental benefits exclusion clause"; and
2. when the related services are performed in a facility not authorized by state insurance laws and regulations, or individual insurance company policy for reimbursement, i.e.,--a public school setting.

B. Confusion is wide spread over the distinction between what is an educationally related service and what is primarily a medically related service. If a related service is included on a handicapped child's IEP, insurance companies argue that such a related service is educational and invoke the "standard governmental benefits exclusion clause."

C. Some schools are now claiming certain "related services" to be medically oriented and disclaiming responsibility for providing those services in question. Parents may then claim third party reimbursement for those services in question <u>if</u> they are provided <u>by</u> and <u>at</u> an authorized facility per the scope of their insurance policy.

D. Sources or insurance money that used to provide reimbursement for the primary service needs of severely and profoundly

handicapped children in institutions, are now being denied to public schools. This cut back occurred when the schools began providing programs and services for this class of handicapped children under the mandates of P.L. 94-142 for "a free appropriate public education, in the least restrictive environment."

E. Conflict occurs over the definition of what is the purpose of the related service as required by law and the actual service delivery if that delivery is performed (under the LRE mandate of P.L. 94-142) in a school setting as opposed to a hospital setting.

F. Another policy conflict area centers around how and where the actual related services are carried out. If the mandated related services are provided by the public schools they are not eligible for reimbursement, under the governmental benefits exclusion clause. Nor may schools pass on the charge for those related services to the handicapped student's parents, if the school system contracts for those related services with an outside health agency or private institution.

G. It was established that there are school systems that have a cooperative agreement with a state Medicaid agency that allows schools to deliver Medicaid-paid related services to handicapped children.

H. State insurance laws (regulated by the State Insurance Commission) regulate types of service delivery to be provided to clients (policyholders), rates of payment, qualifications of service providers, and authorize facilities where treatment can be provided.

I. Parents can share in the responsibility of informing school personnel of the related services needs of their child and in processing insurance claims, if eligible for such coverage. However, local school districts cannot attempt to access a family's insurance coverage without authorization from the parent.

J. Insurance company policy "conversion" rights are difficult to obtain, as is transference of coverage when a family with a handicapped child moves or changes school systems. This is a pressing concern for families who need specialized medical, psychiatric and health services for their handicapped children. Health benefits included as a form of employee compensation could limit job opportunities or career advancement if policy benefits and reimbursement differ drastically among different insurance carriers.

K. Findings indicate that disability claims and payments under insurance policies are "adult-oriented" rather than child centered because adults can usually be rehabilitated back into the work force and insurance company profits would not be diminished over a longer period of time.

POSSIBLE FUTURE CONSIDERATIONS AND STRATEGIES

Research findings indicate that the following issues and strategies may be beneficial for obtaining third party payments for related services delivered by a school system to handicapped children:

A. School systems may be able to help parents of handicapped children tap into insurance-related benefits paid for by insurance companies as third-party payments using the rationalization that:

- School systems and not hospitals or clinics are now providing those related services (as required by P.L. 94-142) when included on a handicapped child's individualized education program.

- Parents (employers) are still paying premiums on their insurance policies to cover the costs of needed related services that are now being disallowed for third party compensation by insurance carriers since they are being performed in a school setting.

- To accomplish change, and to begin to establish some memorandum of understanding between insurance companies and education agencies, it may be necessary to propose amendments to certain state legislative laws and regulations affecting denial of coverage or payment limitations of insurance companies in that state.

- It may be helpful if school systems would provide information and counseling services to parents who are in need of information on insurance coverage for their handicapped children.

B. A "coordination of benefits" approach may be viewed as a minimum starting point to help educational agencies and insurance carriers work out policy questions and definitional (language) problems. Such an approach demands that insurance carriers gain greater understanding of the school as a health care provider and that educational policy makers become knowledgeable about insurance systems.

C. Change may also be able to be accomplished at the Policy Provision Level of major insurance companies. A suggested approach would be to use the theory that competition innate to the insurance market could produce negotiations that would result in needed coverage and compensation for handicapped students who need related services in order to benefit from special education instruction in the public schools. Public money pays premiums to private insurance companies for health benefits for public employees and their dependents. This leverage could be used

during the negotiations of a health care contact with an insurance carrier.

D. The number of persons, influence, and sophistication of a group (whether a parents' group or education agency) are necessary elements to enhance the bargaining stature of the group during the negotiation of a contract in order to obtain payment for related services from insurance companies.

Another strategy to provide or improve the delivery of educational and related services for each handicapped child is the formulation of cooperative agreements. Chapter III will present and analyze a variety of cooperative agreements recently developed on a federal level. Several federal and state agencies provide services and fund programs for eligible participants. Well written interagency agreements incorporate measures for quality and cost control and eliminate duplication in program development and service delivery. Through considering such options relative to collaborative programming on state and local levels, educational policy makers can provide an appropriate education and related services to each handicapped child at no cost to the parents or guardian.

Chapter III
NATIONAL POLICY AGREEMENTS: OPTIONS FOR COST SHARING AND DELIVERY OF RELATED SERVICES

INTRODUCTION

One of the crucial problems encountered by many state education agencies is the implementation of P.L. 94-142 is the provision of related services. There are everal federal and state agencies which provide services and fund programs which can be coordinated with state education agency activities to insure that an appropriate education is provided to a handicapped child at no cost to a parent or guardian. As previously discussed, under the mandates of P.L. 94-142, the inclusion of a particular related service in a handicapped child's individualized education program (IEP) does not mean that the education agency itself must necessarily bear the total cost of providing the related service.

Through collaborative programming and cost sharing between various federal, state, and local agencies, mechanism can be established whereby related services can be delivered to handicapped children. A variety of cooperative agreements between the Bureau of Education for the Handicapped (BEH) and other federal agencies have recently been written with the hope that they will encourage the development of similar agreements for the delivery of related services at state and local levels. Pertinent features of these federal cooperative agreements will be presented in this chapter as possible options for cost sharing and service delivery to handicapped children.

COOPERATIVE AGREEMENTS

MEDICAID (TITLE XIX) AND SPECIAL EDUCATION COOPERATIVE AGREEMENT

The Bureau of Education for the Handicapped has developed a national policy agreement with the Office of Child Health Medicaid Bureau which administers the

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) component of the Medicaid (Title XIX) of the Social Security Act. The EPSDT program provides screening, evaluation and other related services such as physical therapy, prothesis and ongoing medical treatment for income-eligible handicapped children.

Many of the related services required by P.L. 94-142 could be provided through EPSDT financed programs. In support of the national agreement, the Medicaid Bureau has encouraged State Medicaid agencies to recognize education agencies as "health providers" under Medicaid regulations. Cooperative agreements between a state education agency and the state Medicaid agency could result in properly certified education agencies being allowed to charge EPSDT for services provided to income eligible children under Title XIX.

Another option under such an agreement would be to have the state education agency develop a collaborative agreement with the state Medicaid agency which permits that agency to perform the related services in cooperation with the schools. The end result in either option is the cost sharing and delivery of the necessary services. State and local educational agencies are concerned with the provision of a free appropriate public education for each handicapped child, and Medicaid agencies are concerned with assuring the provision of necessary health services to eligible children. The successful achievement of both agencies' goals is dependent upon the effective use of existing resources, including funding mechanism and service delivery.

Consequently, the Bureau of Education for the Handicapped and the Office of Health Medicaid Bureau have identified these purposes of the federal cooperative agreement:

- To facilitate cooperative efforts at the state and local levels between state education agencies and state Medicaid agencies in order to assure that eligible handicapped children receive all

services to which they may be entitled under federal law.

- To give priority to the identification of handicapped children and to promote referral of such children into the appropriate agency's service delivery system.

States have considerable flexibility in administering Medicaid funds, in determining eligibility requirements and in determining what services will be provided. While state Medicaid programs differ significantly, all states are required to provide certain services, including preventive and curative health care services for children under 21 from low income families. The Early and Periodic Screening, Diagnosis and Treatment component of Medicaid is one option policy makers may wish to consider in establishing funding mechanisms for assuring the delivery of related services to eligible handicapped children.

HEAD START AND THE BUREAU OF EDUCATION FOR THE HEANDICAPPED JOINT AGREEMENT

A second cooperative agreement was announced in June 1978 in a Memorandum from Edwin Martin, Deputy Commissioner, Bureau of Education for the Handicapped (BEH), and Blandina Cardenas, Commissioner of Administration for Children, Youth and Families (ACYF). This joint memorandum represents an initial policy statement by both agencies and a commitment by both agencies to assist Head Start and education agencies in resolving policy issues and developing cooperative service agreements for the provision of services to handicapped children. The announcement reiterated that Head Start grantees are required to provide on a statewide basis, that at least 10 percent of the enrollment opportunities in Head Start be made available to handicapped children.

In 1977, Head Start enrolled over 36,000 children professionally diagnosed as handicapped in preschool programs. This figure represented 13 percent of the total Head Start enrollment. In order that children participating in Head Start

programs may fully realize their potential and benefit from a continuing education and related service, it is imperative Head Start grantees and state or local educational agencies work closely together. Such cooperation assures handicapped children and their parents of maximum assistance and provision of services under their respective programs.

JOINT POLICY STATEMENT BETWEEN THE BUREAU OF EDUCATION FOR THE HANDICAPPED AND THE BUREAU OF COMMUNITY HEALTH SERVICES

Another cooperative agreement between agencies providing services to handicapped children was ratified between the Bureau of Education for the Handicapped and the Bureau of Community Health Services (BCHS). Both agencies have mandates under federal law to identify, screen, and evaluate young children for potential handicapping conditions and may provide similar services including counseling, referral and case management.

In order to provide assistance to states in support of collaborative planning, programming, and evaluation, the following information contained in the joint policy statement may be of particular interest to state and local education policy makers:

> The Bureau of Community Health Services administers the State Maternal and Child Health and Crippled Children's Services programs which are authorized by Title V of the Social Security Act. These programs provide early identification, diagnostic and treatment services for handicapped children. The BCHS also administers the Supplemental Security Income Referral and Services Program for Blind and Disabled Children. This program, authorized by Section 1615 of the Social Security Act, provides for counseling, development of individual service plans, and referrals for disabled children under 16 years of age, and provides medical, social, developmental, and rehabilitative services for disabled children under 7 years of age and those who have never attended public school.
>
> The State Maternal and Child Health programs are responsible for Programs in each State which include Maternity and Infant Care Projects, Infant Intensive Care Projects and Family Planning Projects. One of the legislative mandates of these projects is to help reduce the incidence of mental retardation and other handicapping conditions caused by complications associated with childbearing.

The Bureau's maternal and child health activities also include services for a variety of handicapping conditions which are provided by a series of special projects. Examples of programs supported by the BCHS through these special projects are speech and hearing programs, hemophilia diagnostic and treatment centers, genetic testing and counseling programs, child development clinics, and university affiliated centers.

COOPERATIVE AGREEMENT BETWEEN THE BUREAU OF EDUCATION FOR THE HANDICAPPED AND THE SOCIAL SECURITY ADMINISTRATION

Some of the services presently provided by the Social Security Administration (SSA) through its Supplemental Security Income (SSI) program may be of assistance to state and local educational agencies in meeting the mandate of P.L. 94-142 to provide a free appropriate education to handicapped children. The rehabilitation benefits provided through SSI assistance programs may include medical services such as prosthetics devices, psychiatric services, educational services, and other social services necessary for rehabilitation.

State and local education policy makers should be aware that in addition to providing monthly checks to people in financial need who are 65 or older, SSI assistance is also available to blind or disabled persons of any age who are in financial need. Eligibility and the amount of financial assistance depend largely on the income and assets of the parents and child. In addition to SSI cash payments, eligible receipients may receive rehabilitation benefits and be eligible for Medicaid under state administered plans.

Although the SSI program has been in existence since 1974, there is doubt that all eligible children have been identified and served. States that identify all SSI eligible children and refer them to social security offices have the opportunity to make available to those children many of the related services necessary for a handicapped child to benefit from special education. Through this cooperative agreement, both federal agencies are taking the initiative in recommending a joint outreach effort to identify SSI eligible children as part of the child find requirements of P.L. 94-142.

TITLE XX OF THE SOCIAL SECURITY ACT AND THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

Several state agencies have raised questions about possible inconsistencies between Title XX of the Social Security Act and the free appropriate public education requirements of P.L. 94-142. BEH's Deputy Commissioner Edwin Martin has recently clarified this issue to assure the delivery of necessary related services to eligible handicapped children. States have asked (1) if the fee requirements under Title XX are inconsistent with the no cost requirements and, if so, (2) whether the states' Department of Mental Health and other programs can participate in both Title XX and P.L. 94-142. Martin responded that these requirements are not inconsistent:

(1) Title XX does not require any fees to be charged for the provision of services to public assistance recipients or other eligible individuals whose family gross monthly income is less than 80% of the median income of a state adjusted for family size. A State Title XX agency, however, may charge fees to such individuals.

(2) While Title XX does require a fee to be charged where family income is above a certain level, Title XX does not require that the parents pay the fee. The State Title XX agency may not pay for, or absorb, a fee which it is required or opts to charge for social services, but it is permissible for a third party, such as another public or private agency, such as the education agency, to pay the fee. The fees charged parents may be paid for by the education agency in order to meet the "no cost to parents" requirements of EHA. The FAPE "no cost" requirements only apply when the "related services" are necessary for the child to benefit from special education.

State education agencies may wish to develop a state interagency agreement with the state Title XX agency in order to determine state policies in respect to the use of special education and Title XX funds. One method to initiate such efforts might be to encourage active participation by both agencies in the development of the Annual Program plan submitted by the state education agency to BEH and in the Development of the Title XX Comprehensive Annual Service Plan (CASP).

COLLABORATION BETWEEN EDUCATION AND VOCATIONAL REHABILITATION AGENCIES

One of the earliest cooperative agreements between the Office of Education and another agency was developed with the Commissioner of Rehabilitation Services, Robert R. Humphreys in October, 1977. This memorandum outlined the changing roles and responsibilities of special education, vocational education and vocational rehabilitation and contained examples of cooperative activities. One of the stated purposes of the agreement is to assure that all agencies administering these programs understand that eligibility under one law should not result in a denial of "complementary" services under another.

> School systems now have rapidly expanding responsibilities for serving handicapped persons under the Education of the Handicapped Act, the Vocational Education Amendments, Section 504 of the Rehabilitation Act of 1973 and under State legislation. At the same time, the Rehabilitation Act of 1973 requires that vocational rehabilitation agencies make optimal use of "similar benefits" which are available under other programs. This has caused some confusion about what services are appropriately delivered by vocational rehabilitation agencies, by education agencies or by such agencies working cooperatively.
>
> In many States, cooperatively financed school programs for handicapped children were established at a time when special education agencies had limited resources and the vocational rehabilitation program was interested in helping, to the extent possible, to assure that those children approaching an employable age were adequately prepared to bridge the gap between the public school system and the world of work. With the enactment of the new education legislation, Congress has clearly expressed its intention that all handicapped children and youth be provided a free appropriate public education under the supervision of the State education agency. This mandate carried with it a responsibility for other public programs such as vocational rehabilitation to carefully review their current operations to assure non-duplication of services. Thus, this era of expanding programs benefiting the handicapped requires education and vocational rehabilitation agencies to pursue new approaches, and new opportunities, to collaboration.

Commonality of Goals

> The Office of Education and the Rehabilitation Services Administration recognize that they have certain common responsibilities as providers of human services for handicapped persons. Education agencies are concerned with the overall life adjustment of handicapped young persons within their communities, including their ability to become employed. Vocational rehabilitation agencies are concerned with enabling handicapped individuals -- particularly the severely disabled -- to prepare for and engage in employment. These concerns are clearly compatible and every effort should be made to coordinate available services.

The Office of Education and the Rehabilitation Services Administration recognize that they share a commonality of goals as providers of services to handicapped persons. Both agencies are concerned with the education and overall adjustment of handicapped youth, including their ability to become employed. Since these concerns are clearly compatible, every effort on state and local levels should be made to coordinate available service delivery.

CONCLUDING OBSERVATIONS

Joint cooperative agreements between various agencies on state and local levels can facilitate the delivery of related services to handicapped children and enable the agencies to share costs and personnel. The cooperative agreement options listed above could help state and local policy makers coordinate their efforts in more realistic and cost efficient ways. Such cooperative activities are needed on state and local levels and undoubtedly will continue to be formulated so that each handicapped child can benefit from a free appropriate public education, which includes special education and related services to meet their unique needs.

APPENDIX A*

Respondent_____ Date_____

Position/Title_____ Interviewer_____

Address_____

_____

_____

Telephone_____

INTERVIEW FORM: THIRD PARTY PAYMENTS

1. Are third party payments made in your state for "related services" when included in a child's IEP as mandated by P.L. 94-142?

   ( ) Yes ( ) No

   If yes, by whom?

   ( ) Blue Cross/Blue Shield ( ) CHAMPUS
   ( ) Private Insurance Carrier ( ) Medicaid
   ( ) Health Maintenance Organization ( ) Other, Specify_____

   Comment:

2. Does your state have a cooperative agreement with the state Medicaid agency that allows schools to deliver Medicaid-paid related services to handicapped children?

   ( ) Yes ( ) NO

   If yes, could you please forward a copy of the cooperative agreement to us?

   Comment:

3. Do third parties pay for or exclude these related services when written into a handicapped child's IEP?

	Pay	Excluded
Transportation	( )	( )
Speech Pathology	( )	( )
Audiology	( )	( )
Psychological Services	( )	( )
Physical Therapy	( )	( )
Occupational Therapy	( )	( )
Recreation	( )	( )
Early Identification of Assessment	( )	( )
Counseling Services	( )	( )
Medical Services for Diagnostic or Evaluation Purposes	( )	( )
School Health Services	( )	( )
Social Work Services in Schools	( )	( )
Parent Counseling and Training	( )	( )
Other, Specify _____		

   Comment:

*Developed by the Policy Research Center for the Policy Options Project, October, 1979.

4. Who may provide the related service to obtain third party payment.

( ) SEA/LEA Employee
( ) Any licensed/certified person
( ) Professional through contract arrangement
( ) Only a licensed physician
( ) Consultant
( ) Other, Specify _____

Comment:

5. Where is the service provided, if third party payments are to be made?

( ) In a school facility
  ( ) Public school
  ( ) Private school
  ( ) Residential school
( ) In a hospital
( ) In a private clinic
( ) In a professional's office
( ) At home
( ) Other, Specify _____

Comment:

6. What procedure is used for obtaining third party payments?

( ) School submits claim
( ) Parents submit claim
( ) Independent billing by service provider
( ) Other, Specify _____

Comment:

7. Do you have any state policies, regulations, agreements, data, etc., relating to third party payments that could be forwarded to us.

( ) Yes ( ) No

Comment: